

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
3 State of California
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13 BEFORE THE LABOR COMMISSIONER

14 FOR THE STATE OF CALIFORNIA

15 WORLD CLASS SPORTS,

16 Petitioner,

17 vs.

18 PAUL FOXSON,

19 Defendant.

Case No. TAC 16-96

DETERMINATION OF
CONTROVERSY

20 **Introduction**

21 The above captioned matter was initiated by a petition filed May 20, 1996, by
22 WORLD CLASS SPORTS (hereinafter "petitioner," or "WCS") against PAUL FOXSON
23 (hereinafter "respondent," or "Foxson"). The petition sought recovery of \$261.26 in
24 unpaid commissions, together with commissions on future compensation received by
25 respondent as payment for a United Parcel Service television commercial.

26 Respondent did not file a formal answer to the petition, but wrote a letter dated
27 January 8, 1997, which denied many of the material allegations of the petition and sought
28 recovery of \$496.03 in commissions previously paid. A notice setting the hearing of this
matter for June 24, 1997, at 10:30 a.m. was mailed on May 16, 1997, but this notice gave

1 an incorrect address for the location of the hearing. A corrected hearing notice, which set
2 forth the correct address was mailed on May 19, 1997. At the request of respondent, the
3 matter was continued, and a notice of continued hearing was sent on June 5, 1997, setting
4 the hearing date for Monday, July 7, 1997 at 9:00 a.m.

5 Petitioner appeared at the hearing by Andrew Woolf. Respondent appeared in
6 person.

7 Based on the testimony and evidence presented at the hearing, the Labor
8 Commissioner adopts the following Determination of Controversy.

9
10 **Findings of Fact**

11 1. Administrative notice is taken of the fact that World Class Sports is a
12 fictitious business name, and that the entity using that name is a partnership consisting of
13 Donald Lyle Franken and Andrew Lawrence Woolf. Said partnership is licensed as a
14 talent agency, holding license number TA-0451.

15 2. In October of 1995, an advertising agency representing United Parcel Service
16 was in the process of seeking track and field athletes to be filmed for a television
17 commercial which would air during the 1996 Olympic Games. Christopher Wilcox, an
18 athlete who was then represented by WCS, intended to fly from Northern California to
19 Los Angeles and to try out to appear in this commercial.

20 3. There is a conflict in the evidence as to how respondent Foxson became aware
21 of this commercial. Foxson and Christopher Wilcox testified that Wilcox informed
22 Foxson of the commercial and suggested that Foxson also attend and try out for the
23 commercial. Andrew Woolf testified that during a phone conversation confirming his
24 own appearance, Christopher Wilcox inquired whether it would be all right if Foxson
25 attended and that Woolf told Christopher that it would be all right for Foxson to attend.

26 4. At the initial session, athletes were asked to complete a sign in sheet.
27 Christopher Wilcox completed the sign in sheet on behalf of respondent Foxson. In the
28 blank where the athletes' agents' name would appear, Wilcox testified that he filled out

1 "World Class Sports." Wilcox had not asked Foxson if he wished to be represented by
2 World Class Sports, nor had he asked World Class Sports if it would agree to represent
3 Foxson. He merely took it on himself to complete the sign in sheet in this manner.

4
5 5. WCS had no written contract with respondent Foxson. WCS did send a written
6 Screen Actors' Guild client confirmation to the Screen Actors' Guild Agency division on
7 or about November 6, 1995, stating that WCS was representing Foxson (misspelled as
8 Foxen) in connection with television commercials. However, this document was not
9 signed by Foxson.

10 6. Approximately a week after the try out, the advertising agency gave WCS a list
11 of "call backs" (individuals who were to be asked to make a second appearance
12 consideration). Both Wilcox and Foxson were on this call-back list.

13 7. There is again a conflict in the testimony. Andrew Woolf testified that he
14 telephoned both Wilcox and Foxson in Northern California and informed them of the call-
15 back, and that both flew to Los Angeles for the call-back appearance. Respondent
16 Foxson testified that before he received any communication from WCS, he had received
17 telephone calls from the casting director and a production assistant on the commercial
18 inviting him to the call-back.

19 8. A few days after the call-back appearance, the advertising agency decided that
20 they would use Foxson as a principal in the proposed commercial. On November 6, 1995,
21 Foxson flew from Northern California to Los Angeles and participated in two days of
22 filming for the commercial. During this time, he gave a photograph and a resume
23 (required for a Taft-Hartley Act waiver) to a representative of World Class Sports.

24 9. Respondent Foxson testified that he had never intended to retain WCS to
25 represent him in connection with the commercial in question, which he believed he had
26 obtained through his own efforts, but intended only to have WCS represent him in
27 connection with future appearances which WCS might arrange.

28 10. In late November, 1995, World Class Sports received two checks (each

1 representing \$443.25 in gross compensation) as fees for usage of the commercial. WCS
2 deducted 10% of the gross amount (a total of \$88.65) from these checks and forwarded a
3 check for the net amount (less payroll deductions and commission) to respondent Foxson,
4 who endorsed and deposited the check on or about December 5, 1995.

5 11. In January of 1996, WCS again received checks and usage statements
6 representing fees due to respondent Foxson for use of the commercial. WCS again
7 deducted a commission of 10% of the gross amount and sent a check for the net amount
8 (less payroll deductions and commission) to respondent Foxson, who endorsed and
9 cashed it on or about February 5, 1996.

10 12. Both checks to respondent Foxson were accompanied by statements showing
11 the gross amount, payroll deductions, the computation of the commission and the net
12 amount of the check.

13 13. On or about February 6, 1996, respondent Foxson sent a letter to the disbursing
14 agent which was handling payments requesting that no further funds be sent to WCS and
15 that all future checks be sent directly to him at his home address. On February 22, 1996,
16 respondent Foxson wrote a letter to World Class Sports forwarding a copy of his letter of
17 February 6.

18 14. Both Foxson and Wilcox testified that Foxson had not been in Northern
19 California on the date on which the process server purported to have personally served
20 him with the petition in this matter.

21 **Conclusions of Law**

22 1. Petitioner World Class Sports, a partnership of Donald Lyle Franken and
23 Andrew Lawrence Woolf is a talent agency within the meaning of Labor Code §1700.4
24 (a). Respondent is an "Artist" within the meaning of Labor Code §1700.4(a). The Labor
25 Commissioner has jurisdiction over this matter pursuant to Labor Code § 1700.44.

26 2. Title 8 of the California Code of Regulations Section 12002. reads in part as
27 follows:

28 "A talent agency shall be entitled to recover a fee, commission or
compensation under an oral contract between a talent agency and an
artist as long as the particular employment for which such fee,

1 commission or compensation is sought to be charged shall have been
2 procured directly through the efforts or services of such talent agency
3

4 In the case at bar, World Class Sports was not the procuring cause of Foxson being used in
5 the commercial. Instead, Foxson obtained that employment by his own efforts and
6 through the efforts of third parties.

7 3. WCS is not entitled to recover from Foxson the \$261.26 sought by its petition,
8 nor any part thereof, nor any commission on future compensation which may be received
9 by Foxson on the United Parcel Service commercial which is in question in this
10 proceeding.

11 4. Labor Code Section §1700.44 (c) provides in part:

12 "No action or proceeding shall be brought pursuant to this chapter
13 with respect to any violation which is alleged to have occurred more
14 than one year prior to the commencement of the action or proceeding"

15 5. Even assuming that respondent Foxson's letter of January 8, 1997, constituted
16 a petition for adjudication of a controversy under the Act, that petition was made over two
17 years after the initial payment of commission in November of 1995. It was however
18 within one year after the second payment of commission in February of 1996.
19 Accordingly (even treating the letter as a petition) the petition is filed outside the statute of
20 limitations with respect to the November 1995, payment. Thus, the November 1995,
21 payment cannot be recovered in this proceeding before the Labor Commissioner.

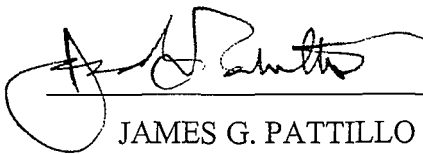
22 6. With respect to the check issued January 31, 1996, and cashed February 5,
23 1996, this check represented \$4,073.57 in gross earnings and generated a commission of
24 \$407.37. This commission was deducted within one year from the date on which
25 respondent Foxson sent the letter of January 8, 1997, to the Labor Commissioner.
26 Treating that letter as a petition, the amount of \$407.37 is recoverable in this action.

27 Order

28 It is hereby ordered that petitioner World Class Sports, a partnership consisting of
Donald Lyle Franken and Andrew Lawrence Woolf, pay to respondent Paul W. Foxson

1 the sum of \$407.37 for reimbursement of commissions charged without a written
2 agreement on compensation which was not procured directly through the efforts or
3 services of petitioner World Class Sports.
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7 Dated: July 30, 1997
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12 JAMES G. PATTILLO

13 Attorney for the Labor Commissioner
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15 **Adoption By The Labor Commissioner**

16 The above determination is adopted by the Labor Commissioner in its entirety.
17

18 Dated: 
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Signature

20 Print Name JOSE MILLAN

21 STATE LABOR COMMISSIONER
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